

JUDI MORROW SCHULTZ, CSR, OFFICIAL COURT REPORTER  
504 FAIRWAY DRIVE, PASS CHRISTIAN, MS. (228)865-4011

1 THE COURT: All right. We're on the  
2 record this morning in the case of -- or the  
3 matter of the estate of Jessie Lee Williams,  
4 deceased. Mr. Crosby and, I take it now, Mr.  
5 Whitfield is in this matter.

6 Before the Court are two motions: One, a  
7 motion by the sheriff of Harrison County to  
8 quash a subpoena duces tecum; the other, a  
9 motion by the City of Gulfport to quash a  
10 subpoena duces tecum served upon its chief of  
11 police for certain records and videos  
12 surrounding an incident that occurred at the  
13 jail, which, as I understand it, the estate of  
14 Jessie Lee Williams claims led to the death of  
15 Mr. Williams.

16 I will ask for the counsel, for purposes  
17 of the record, to state their appearances,  
18 please, starting over here with Mr. Whitfield.

19 MR. WHITFIELD: Your Honor, John  
20 Whitfield here, along with Mr. Crosby, on  
21 behalf of the estate of Jessie Lee Williams.  
22 And we have here with us Mr. Terry Williams,  
23 the administrator of the estate.

24 THE COURT: All right, sir.

25 MR. FANCA: Your Honor, I'm Cy Faneca,

1 with the firm of Dukes, Dukes, Keating &  
2 Faneca, appearing on behalf of the sheriff of  
3 Harrison County.

4 THE COURT: All right.

5 MR. FANeca: This is my associate,  
6 Haley --

7 MS. BROOM: -- Broom.

8 THE COURT: Welcome.

9 MR. BRUNI: Your Honor, my name is Jeff  
10 Bruni, and I'm here on behalf of the City of  
11 Gulfport and its chief of police.

12 THE COURT: All right. And I note that  
13 Ms. Dodson, an assistant district attorney,  
14 together with Mr. Woods, are in the courtroom.

15 The pleadings provided to me by the -- or  
16 filed by the City and/or the sheriff reference  
17 that the matter is under investigation by the  
18 Federal Bureau of Investigation, the  
19 Mississippi Highway Patrol, and the District  
20 Attorney's Office, I believe.

21 MR. FANeca: That is correct, Your Honor.

22 THE COURT: So what I would like to ask  
23 as a threshold matter is what notice, if any,  
24 was given to the United States Attorney  
25 regarding this hearing today?

1 MR. CROSBY: Your Honor, we did not give  
2 any notice to the United States Attorney. We  
3 felt like it was simply a matter that we serve  
4 subpoenas on the sheriff and the City of  
5 Gulfport Police Department. We did not ask  
6 for their presence. We've not been given any  
7 official notice that they're involved in the  
8 case.

9 And I have communicated with them. The  
10 communication has been initiated by me, and  
11 they've not requested to be notified  
12 concerning any matter.

13 THE COURT: Is the Federal Bureau of  
14 Investigation investigating this matter?

15 MR. CROSBY: And I had a meeting with an  
16 agent in my office, Dwight Johnson, a  
17 representative of the FBI. And I introduced  
18 him to the first witness that came to my  
19 attention in the matter as soon as he did come  
20 to my attention. And I provided them with  
21 medical authorizations so that they could  
22 obtain medical records on their own, but they  
23 have not asked to be -- asked for any further  
24 notice or any involvement in the case. And  
25 they are very independently operating.

1 THE COURT: They normally do.

2 MR. CROSBY: Yes, sir.

3 THE COURT: All right. Mr. Faneca and  
4 Mr. Bruni, do you have any information  
5 concerning whether or not the U.S. Attorney or  
6 the FBI would be interested in the outcome of  
7 this case?

8 MR. FANECA: Your Honor, I would defer to  
9 the district attorney's office. I have Miss  
10 Lisa Dodson here, who could speak to that. It  
11 is my understanding it is a coordinated  
12 investigation involving Harrison County  
13 district attorney's office, the Mississippi  
14 Highway Patrol, and the Federal Bureau of  
15 Investigation. In fact, I think that is even  
16 -- if my memory serves me correctly, that is  
17 acknowledged by counsel opposite in some of  
18 his pleadings.

19 THE COURT: Ms. Dodson.

20 MS. DODSON: Judge, that is correct. The  
21 matter is currently under investigation by our  
22 office, as well as the Mississippi Bureau of  
23 Investigation. I know the FBI and the U.S.  
24 Attorney's Office generally do not acknowledge  
25 what they're investigating or what they're

1 doing; however, they are involved. We are  
2 coordinating with them. And at some point, I  
3 feel that one or the other entity will speak  
4 to this matter as it does generally through  
5 its grand jury.

6 THE COURT: All right. I'm going to ask  
7 -- I don't know who I'm going to ask, but I  
8 think I'll ask Ms. Dodson in the presence of  
9 Mr. Crosby and counsel for the sheriff and  
10 police department. We will recess, and during  
11 that recess, I will ask that you call the  
12 United States Attorney and advise him of this  
13 hearing, as to whether or not they wish to be  
14 present. All right?

15 MS. DODSON: I'll do that, Your Honor.

16 THE COURT: Thank you. We'll be in  
17 recess until you notify the bailiff you're  
18 ready to resume one way or the other.

19 (OFF THE RECORD.)

20 THE COURT: All right, Ms. Dodson.

21 MS. DODSON: Judge, Mr. Wood did attempt  
22 to call and was unable to reach Mr. Lampton or  
23 Mr. Lacey or anyone else in the office, I  
24 believe -- or any other attorney in the  
25 office. But he did have a conversation with

1 Mr. Lacey a couple of days ago, and I'll let  
2 him relate that to the Court.

3 MR. WOOD: Yes, sir. When we left during  
4 the recess, Judge, I tried to contact Dunn  
5 Lampton, who's out of town for the rest of the  
6 week. I also tried to contact Jack Lacey, who  
7 is the Assistant U.S. Attorney that we've been  
8 speaking to with regard to this investigation,  
9 who's also in court today in Jackson. I also  
10 asked for the chief of their criminal section,  
11 a John Dowdy, who was out of the office, also.

12 But I did speak with Jack Lacey on  
13 Monday, and he was aware that these subpoenas  
14 had been filed last week. And I have spoken  
15 with him on this past Monday and explained to  
16 him that there would be a hearing set today on  
17 these motions that had been filed by the City  
18 of Gulfport and the Harrison County Sheriff's  
19 Department. And he didn't express any  
20 interest in being here. I just wanted to  
21 notify him that they were set today, and he  
22 didn't indicate that they would be sending a  
23 representative or had any interest in sending  
24 a representative.

25 THE COURT: All right. We'll proceed

1           then.

2                     May I ask at the outset if the district  
3           attorney wishes to state its position with  
4           regard to the matters which have been  
5           requested in the subpoena duces tecum?

6                     MS. DODSON: Judge, at this time our  
7           position -- Of course, we have not been served  
8           with a subpoena, but we would object to the  
9           release of these items simply because this is  
10          an ongoing investigation. Generally, we do  
11          not release any of this type of information,  
12          whether it's an officer-involved incident or  
13          not, nor do we release grand jury information.

14                    As I said earlier, we generally speak  
15          only through our grand jury, either as an  
16          indictment or a no true bill. And at  
17          this time this could be harmful to the  
18          investigation, until at least the  
19          investigation is complete, and there has been  
20          some determination one way or the other.

21                    THE COURT: What time frame are you  
22          looking at insofar as completion of the  
23          investigation, if you know?

24                    MS. DODSON: Judge, the only thing I can  
25          tell the Court for sure is it won't be this



1 week. It's a matter of all of the  
2 investigators completing their reports,  
3 putting the file together, and providing that  
4 to the prosecutors, and then it will have to  
5 go through whichever grand jury process it  
6 goes through. So I have no way to know  
7 whether that would be a matter of weeks or  
8 months, Your Honor.

9 THE COURT: All right. Thank you.

10 All right. We'll proceed then with the  
11 hearing on the motions to quash and the  
12 subpoena duces tecum, and we'll start with  
13 the Harrison County Sheriff's Department.  
14 Mr. Faneca.

15 MR. FANECA: May it please the Court and  
16 counsel, Your Honor, the threshold issue in  
17 the matter that is before the Court in this  
18 hearing today is the question of jurisdiction  
19 -- subject matter jurisdiction. I do not  
20 believe --

21 THE COURT: If you could speak up just a  
22 little bit.

23 MR. FANECA: Sure. Can we turn this a  
24 little bit?

25 THE COURT: That doesn't work.

1 MR. FANECA: Then it doesn't matter which  
2 direction we turn it.

3 THE COURT: It's not -- It just feeds to  
4 the court reporter's recorder. That's all.

5 MR. FANECA: Well, the threshold issue  
6 that I see in this case -- the matter, I  
7 should say, before the Court today is the  
8 issue of subject matter jurisdiction with  
9 regard to the subpoena duces tecum. It is my  
10 sincere belief that this Court does not have  
11 subject matter jurisdiction to issue the  
12 subpoena duces tecum that has, in fact, been  
13 issued.

14 The case pending in this Court is the  
15 estate of Mr. Jessie Williams, deceased. Now,  
16 the Court does not have a wrongful death  
17 action pending. It does not have a 1983 claim  
18 for monetary damages pending. What it does  
19 have is the estate, and, at this point in  
20 time, that is all that is pending before this  
21 Court.

22 In Hunt versus Potter, the Mississippi  
23 Supreme Court stated that jurisdiction granted  
24 in 9-5-38 is limited to demands against the  
25 estate and does not extend to demands of the

1 estate against living persons.

2 Another case addressing jurisdiction is  
3 Lawrence County Schools versus Brister, in  
4 which the Mississippi Supreme Court held that  
5 chancery does not have subject matter  
6 jurisdiction over a state tort claim act.

7 Now, it's important to recognize a  
8 subpoena duces tecum is a form of discovery.  
9 Rule 45, which states the administrative  
10 process for the issuance of the subpoena duces  
11 tecum, must be read within the context of Rule  
12 26, which governs discoverable matters. Rule  
13 26 provides that a discovery request must be  
14 relevant to the issues raised by the claims or  
15 defenses of any party. The comment to Rule 45  
16 is clear that the material sought by a  
17 subpoena must be relative to the controversies  
18 before the Court.

19 Commenting on Rule 45, the United States  
20 Supreme Court -- And I should pause here and  
21 say our rules, as we all know, were patterned  
22 and the modeled after the federal rules.

23 THE COURT: And life hasn't been the same  
24 since.

25 MR. FANCA: Pardon?

1 THE COURT: And the life hasn't been the  
2 same since.

3 MR. FANECA: Yeah. The U.S. Supreme  
4 Court stated Rule -- This issue came up in  
5 District Court. So it comes up to the U.S.  
6 Supreme Court, and the U.S. Supreme Court  
7 states, Rule 45 grants District Court power to  
8 issue subpoenas as to witnesses and documents,  
9 but the subpoena power cannot be more  
10 extensive than the Court's jurisdiction.  
11 Therefore, if the District Court does not have  
12 subject matter jurisdiction over the  
13 underlying action, and process was not issued  
14 in aid of determining jurisdiction, process is  
15 void. Therefore, the fundamental defect with  
16 the subpoena duces tecum is that it has been  
17 issued in a court not having subject matter  
18 jurisdiction.

19 Remember, we're talking about subject  
20 matter jurisdiction over the potential  
21 wrongful death claim, or perhaps even a  
22 potential 1983 claim for monetary damages.  
23 Therefore, we never reach the issue of whether  
24 the information sought should be disclosed at  
25 this time, is an exception to the records that

1 are subject to disclosure. We never, ever  
2 reach that issue.

3 If the Court has subject matter  
4 jurisdiction, I have the burden of proving  
5 reasons to quash the subpoena duces tecum, and  
6 I am prepared to put on proof. But I would  
7 assert that if this Court does not have  
8 subject matter jurisdiction, I do not have  
9 that burden because subject matter  
10 jurisdiction is something the Court either has  
11 as a matter of law or does not have as a  
12 matter of law. It is not something that the  
13 sheriff can bestow on the Court or waive and  
14 submit to the Court. It is governed by the  
15 Constitution and the statutes which grant  
16 authority to the courts. And we all know that  
17 the Constitution and the statutes grant  
18 various jurisdictional authority to the  
19 various courts within the state of  
20 Mississippi.

21 The rule -- the time-honored rule with  
22 regard to ascertaining what jurisdiction does  
23 a court have, subject matter we're talking  
24 about, what jurisdiction does a state agency  
25 or a local agency have, is what has expressly

1           been granted by the Constitution and by the  
2           statutes to that court or that agency. It is  
3           not what is prohibited in that Court or by the  
4           statute of that agency. So I think -- you  
5           know, I don't think, I feel confident that the  
6           primary threshold issue that really preempts  
7           any other issue raised is the subject matter  
8           jurisdiction.

9           Now, jurisdiction to administer the  
10          estate, to manage the estate, to manage the  
11          affairs of the minors, is within the context  
12          of the estate proceeding. It is not to ferret  
13          out and to oversee wrongful death claims, 1983  
14          claims. I mean, simply, that's not the  
15          function. This Court has jurisdiction over a  
16          great many matters, but it does not have  
17          jurisdiction over that. The proper forum for  
18          this issue and for this subject matter is  
19          going to be in the Circuit Court, or it's  
20          going to be in the Federal District Court.

21          Now, counsel opposite would say, well,  
22          the Court has jurisdiction over the business  
23          of the minors, and in order for the minors to  
24          determine what is -- you know, to see -- they  
25          need to know what, if anything, they can file

1 and against whom. But, again, that is not  
2 what the Chancery Court's jurisdiction is.  
3 The Chancery Court's jurisdiction is to  
4 administer the estate, see that there's an  
5 administrator, determine who the heirs are --  
6 the wrongful death beneficiaries are,  
7 authorize the administrator to file a wrongful  
8 death action, to manage the monies, if any,  
9 that are recovered in that wrongful death  
10 action, to protect the interests of the minors  
11 with regard to the monies to which come into  
12 the estate as a result of the wrongful death  
13 action, but not, not, to actually pursue the  
14 wrongful death action or the 1983 action.

15 Now we just stop and think, the logic  
16 there is the court who has the jurisdiction  
17 for that discovery is the court in which the  
18 suit is filed. So whatsoever investigation  
19 needs to be done to determine the appropriate  
20 parties, whatever discovery needs to be done  
21 is to be governed by the court having subject  
22 matter jurisdiction. It's perfectly logical;  
23 otherwise, we have a court -- one court going  
24 ahead and taking jurisdiction for the purposes  
25 of discovery, even though it does not have

1 jurisdiction over the underlying matter. And  
2 at some point a wrongful death action or a  
3 1983 action is filed in a different court, and  
4 some of that discovery has already been done  
5 prior to it ever getting to the court that  
6 really has the jurisdiction to hear the merits  
7 of that case.

8 Now, I mean, without getting too far  
9 afield as to what our imagination could tell  
10 us, we can have two different courts -- you  
11 could have a court -- we could have a Chancery  
12 Court saying you discover this, and we could  
13 have Circuit Court or the United States  
14 District Court saying, oh, no, this is not  
15 discoverable. It would lead to chaos.

16 So I am prepared, Your Honor, to go  
17 forward with proof on the merits of whether or  
18 not the information sought is discoverable or  
19 not discoverable; but, I assert respectfully  
20 to this Court that we are not in the proper  
21 forum; and, that, therefore, if we are not in  
22 the proper forum of the Court having  
23 jurisdiction, there is no reason to proceed  
24 because everything is void.

25 And as the Court knows, subject matter



1 jurisdiction may be raised at any time. It  
2 may be raised sua sponte by the Court. It  
3 must be proven by the plaintiff. That being  
4 the case, if I am correct that this Court does  
5 not have subject matter jurisdiction,  
6 everything else we do at this hearing is  
7 basically an exercise in futility. I would  
8 respectfully suggest that Your Honor address  
9 the issue of subject matter jurisdiction  
10 before we get into the merits of whether or  
11 not this discovery is appropriate under the  
12 rules.

13 THE COURT: All right, Mr. Bruni.

14 MR. BRUNI: Your Honor, without repeating  
15 unnecessarily argument by counsel, I would  
16 like just like to point out to the Court that  
17 there is a Mississippi Supreme Court decision,  
18 Long versus McKinney. And for the record,  
19 it's 897 So.2d, beginning at page 160. It's a  
20 2004 case.

21 THE COURT: I'm familiar with the case.

22 MR. BRUNI: Yes, sir, Your Honor. Well,  
23 then you -- the Court is also aware, then, as  
24 stated in the record -- in their published  
25 decision, that the estate proceeding is

1 separate and apart from a wrongful death  
2 claim. And, also, as it sets out in there --

3 THE COURT: Well, I don't question any of  
4 that. I accept the fact that this court does  
5 not have jurisdiction to hear a wrongful death  
6 lawsuit. It does not have jurisdiction to  
7 hear a 1983 action. I will also tell you that  
8 even if both parties came in here and wanted  
9 me to hear it, there's a third person sitting  
10 right here that would have to agree to that,  
11 and I would not.

12 But the issue here is, in my view, the  
13 estate's subpoena duces tecum. And I'm not  
14 meaning to cut you off. I mean, I -- And  
15 there is a vehicle under which this Court  
16 could -- an ancient equitable remedy under  
17 which this Court could act. So the issue of  
18 subject matter jurisdiction on the underlying  
19 wrongful death claim, I don't have any issue  
20 with anything Mr. Faneca has said or that you  
21 have said in your pleadings. And I'm not  
22 trying to cut you off. I spent a considerable  
23 amount of time wading through the 25 pages of  
24 the Long versus McKinney case and others. So  
25 I just want everybody to understand, I accept

1 the fact that this Court is not going to try  
2 the underlying wrongful death claim, if, in  
3 fact, one is ultimately filed. It's just not  
4 a -- that's not a chancery matter.

5 MR. BRUNI: Thank you, Your Honor.

6 I guess, in addition, or to supplement  
7 that, Your Honor, then I will state for the  
8 record that the -- as Mr. Faneca brought out  
9 to the Court, the whole purpose behind a  
10 subpoena is for discovery. And if there is a  
11 subpoena in a Chancery Court estate  
12 proceeding, then what is to be discovered for  
13 administration of the estate -- management of  
14 the estate? There's been no determination of  
15 the heirs or beneficiaries. There's been no  
16 determination that there's any minors in the  
17 record. And so, therefore, for counsel  
18 opposite to make the argument that this is  
19 needed for an investigation to determine  
20 what's in the best interest of the minor,  
21 well, Your Honor, there's nothing in the  
22 record before the Court that there are any  
23 such beneficiaries involved. And so I think  
24 it's a little premature and not ripe for the  
25 Court at this point to make an adjudication

1 based on speculative argument of counsel.

2 The --

3 And taking that one step further, Your  
4 Honor, with regard to the subpoena, if the  
5 Court was to allow a subpoena to be issued and  
6 to be served in any manner such as this -- And  
7 as an officer of the court, I'm before you on  
8 that -- is the Court then to make a finding  
9 that there's some legitimacy to the action  
10 based on the investigation pursuant to the  
11 subpoena? Because if that's true, then the  
12 scenario presented to the Court by Mr. Faneca  
13 would come true. You would have one court  
14 making a determination of legitimacy, whereas  
15 the court in another action would be concerned  
16 with that finding by this court. Would that  
17 be claims preclusion, issue preclusion? How  
18 would that enter into this?

19 And I think that's the burdening and  
20 bothersome thing about this whole situation,  
21 is that while counsel opposite makes the  
22 argument that, well, the subpoena is needed so  
23 I can make a determination under Rule 11 or  
24 the Litigation Accountability Act if there's  
25 any truthfulness behind allegations, well,

1 Your Honor, what do we do the other 95 percent  
2 of the time, attorneys behind the bar? Do we  
3 have to go in front of the Chancery Court and  
4 ask the Court to start issuing subpoenas  
5 before any action is filed to determine  
6 factual specificity behind allegations that  
7 appear in the initial pleadings? No,  
8 certainly not.

9 And so I think it's a little  
10 disingenuous, Your Honor, for someone to try  
11 to argue that the subpoena power is necessary  
12 to legitimize a fishing expedition on  
13 pleadings on another separate action that's  
14 not even been filed, Your Honor. It's using  
15 the Court as nothing more than a backdoor  
16 attempt for potential publicity, for some  
17 other avenue. It's not --

18 I guess the bottom line is, Judge, if  
19 we're going to allow a subpoena to be issued  
20 and served in Chancery Court on the  
21 administration of an estate proceeding, then  
22 what's the purpose? Is the purpose then for  
23 determination of administration of the estate?  
24 The estate is only concerned, as Mr. Faneca  
25 pointed out with the case, with claims against

1 the estate. There's been no claims asserted  
2 in the record against the estate at this point  
3 that we're aware of, Your Honor. And so if,  
4 then, the matter is concerning a claim for the  
5 estate, well, then as counsel brought out, Mr.  
6 Faneca, with the case, that is not proper  
7 jurisdiction of the Court at this point. And  
8 so then if the whole purpose behind the  
9 subpoena is concern for the minors, well, Your  
10 Honor, there's nothing in the record about any  
11 minor at this point. It's not ripe. It's  
12 premature. So -- and if the Court is  
13 concerned about the legitimacy of the minors  
14 as well, Your Honor, well, the estate  
15 proceeding does not bleed over into the  
16 proceedings of a minor. There's no  
17 guardianship, as far as we're aware, open  
18 either.

19 So I feel that right now, as Mr. Faneca  
20 has stated, the issue before the Court is  
21 subject matter jurisdiction. It's the opinion  
22 of an officer of the court and of myself, as  
23 well, that the Court has no subject matter  
24 jurisdiction of this. Thank you.

25 THE COURT: Mr. Crosby or Mr. Whitfield.

1 MR. WHITFIELD: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. WHITFIELD: Your Honor, it is a  
4 privilege to come before this Court and to  
5 represent the estate of Jessie Lee Williams,  
6 Jr. My name is John Whitfield. And on behalf  
7 of myself and Mr. Michael Crosby, we stand  
8 before the Court to respond to the objections  
9 to the subpoena that was issued by this Court.

10 Having had the privilege to likewise come  
11 before this Court on several occasions, I am  
12 aware that the Court has read all of the  
13 pleadings relative to this matter, as well as  
14 the caselaw. And I will not belabor the Court  
15 by going over those items that are stated in  
16 our pleading; however, I will highlight a few  
17 items, Your Honor.

18 The issue that Mr. Faneca raises, first  
19 and foremost, Your Honor, is one that he  
20 couches under the terms of subject matter  
21 jurisdiction. He asks the Court whether it  
22 actually has subject matter jurisdiction to  
23 cover the subpoena that has been issued, and  
24 he cites a few cases in his pleadings, which  
25 the Court has already pointed out have nothing

1 to do with the issuance of a subpoena as it  
2 relates to subject matter jurisdiction.

3 What those cases address, as Mr. Faneca  
4 acknowledged, is just simply where a plaintiff  
5 may properly file a claim that falls under the  
6 Mississippi Tort Claims Act. That's what  
7 those cases address.

8 We stand here before the Court, and we  
9 agree with the vast majority of everything  
10 that Mr. Faneca has said. If this was action  
11 having been filed in this Court against the  
12 sheriff, the City of Gulfport or any other  
13 state agency or a derivative thereof, under  
14 the Mississippi Tort Claims Act, this Court  
15 would not have jurisdiction.

16 Your Honor, Section 9-5-83 of the  
17 Mississippi Code, as well as Article 6,  
18 Section 159, answers that question of subject  
19 matter jurisdiction. This is a court of  
20 equity. This is a court that is charged with  
21 overseeing and hearing matters involving the  
22 administration of an estate and/or overseeing  
23 the affairs of minors.

24 Now, Mr. Bruni raises a question by  
25 stating there has not been a determination of



1 heirs. There has not been a guardianship  
2 opened. The purpose of opening the estate, as  
3 it was done on February the 14th of this year,  
4 was to begin the process to make determination  
5 of whether there are sufficient assets. Part  
6 of the oath that Mr. Williams took before this  
7 Court in the opening of this estate was that  
8 he would, to the best of his ability,  
9 administer the assets, the chattels, the  
10 goods, and the credit of the estate of his  
11 brother. Mr. Williams has already done a  
12 great deal to further that process.

13 Your Honor, Mr. Crosby and I had an  
14 obligation, as the Court is aware, under Rule  
15 3.1 of the Mississippi Rules of Professional  
16 Responsibility, under the Mississippi  
17 Litigation Accountability Act of 1988, as well  
18 as under Rule 11 of the Rules of Civil  
19 Procedure, to thoroughly investigate any  
20 potential action.

21 As stated in the pleadings opening the  
22 estate on February the 14th, Mr. Williams  
23 sought assistance to make a determination  
24 whether a wrongful death action should  
25 proceed. Your Honor, if we stood before this

1 Court, or any Court, and we simply filed an  
2 action based upon speculation, without  
3 investigating, we would be held accountable.

4 Mr. Crosby and I seek the assistance of  
5 this Court to not further or not to even file  
6 or to get into the merits of a wrongful death  
7 suit, but to see if a wrongful death action  
8 should proceed, and, if so, against whom. The  
9 last thing we want to do, Your Honor, is bring  
10 an action -- file an action against  
11 individuals who had nothing to do with the  
12 matter involving the death of Jessie Williams,  
13 Jr.

14 Your Honor, Mr. Faneca made a very  
15 interesting statement. As he was talking  
16 about the Court's subject matter jurisdiction,  
17 and I wrote this down as best I could  
18 verbatim, one of the items he mentioned, he  
19 said, the Court is authorized -- has the  
20 ability to authorize the administrator to file  
21 a wrongful death action. When he was going  
22 through his litany of items that the Court has  
23 proper jurisdiction regarding, this was one of  
24 the items that he mentioned; that the Court  
25 has the ability to authorize the administrator

1 to file a wrongful death action. If the Court  
2 has the ability to authorize the filing of a  
3 wrongful death action, the Court likewise has  
4 the ability to allow the administrator of the  
5 estate to utilize whatever is legally at his  
6 disposal to investigate that matter to make a  
7 determination whether an action should be  
8 filed.

9 There are seven minors who ultimately,  
10 when the time is right, the Court will hear  
11 evidence that they are truly the intestate  
12 beneficiaries of Jessie Lee Williams, Jr.  
13 That time has not come. There's no need for a  
14 guardianship, which is really just a red  
15 herring at this point, because there have been  
16 no assets identified in the estate that inure  
17 to those individuals.

18 THE COURT: Are there any adult heirs at  
19 law -- These seven minors are heirs at law of  
20 Mr. Williams?

21 MR. WHITFIELD: That's correct, Your  
22 Honor.

23 THE COURT: Are there any adult heirs at  
24 law of Mr. Williams?

25 MR. WHITFIELD: Not that we've

1 identified, Your Honor.

2 THE COURT: All right.

3 MR. WHITFIELD: Your Honor, we're not  
4 here to determine whether this Court has  
5 subject matter jurisdiction over a tort claims  
6 action. This is not a tort claims act. The  
7 matter that's before this Court is merely the  
8 administration of an estate authorizing Mr.  
9 Williams the opportunity to fully investigate  
10 this matter.

11 The Court began by asking Ms. Dodson what  
12 was the district attorney's position, and I  
13 believe Ms. Dodson stated that the DA was  
14 concerned about the release of these tapes  
15 because it may harm the investigation. I  
16 believe that -- those were her exact words.  
17 Your Honor, before the Court accepts that as  
18 being the absolute truth, we would urge the  
19 Court, even if it's in camera, to engage in a  
20 dialogue with Ms. Dodson to find out how the  
21 investigation may be harmed if a copy of this  
22 tape is produced to counsel, to the Court, or  
23 to whomever the Court may decide.

24 One primary concern, Your Honor -- And  
25 this is no reflection upon the sheriff, the

1 City of Gulfport, or anyone. Within the past  
2 12 months, or just slightly beyond that, we  
3 have had a tsunami that hit one part of the  
4 world that totally wiped out entire  
5 communities. We have experienced Hurricane  
6 Katrina, which has left many businesses,  
7 governments, individuals, without any shred of  
8 evidence of past dealings. Your Honor, we  
9 firmly believe that the more quality copies  
10 that are in safekeeping, the better it is for  
11 not only the administration of the estate, but  
12 also to further that investigation.

13 We have stated in our pleadings, and we  
14 have requested of the Court, that Your Honor  
15 consider, first and foremost, denying the  
16 motion to quash and allowing the subpoena to  
17 stand requiring that the City of Gulfport and  
18 the sheriff produce these items forthwith. If  
19 Your Honor feels that it may in some way  
20 affect the investigation, then counsel would,  
21 in fact, ask the Court to consider obtaining a  
22 copy of the tape itself and allowing counsel  
23 in chambers to review the tape, so that we can  
24 make a determination.

25 Your Honor, just like Mr. Bruni, we are

1 bound by the rules of professional conduct.  
2 We are bound, as officers of this court, to  
3 act in a certain way and to ensure that  
4 certain things take place. If the Court wants  
5 to go ahead and to order the production of the  
6 videotape under a protective order, that is  
7 another way of safeguarding both the interests  
8 that Ms. Dodson raises, as well as those  
9 raised by counsel opposite.

10 I don't believe that Mr. Faneca would  
11 stand before the Court, and I don't believe  
12 Ms. Dodson would stand before the Court and  
13 tell the Court that Mr. Williams will never be  
14 entitled to this access to the tape. I  
15 believe we all agree, and we all know that  
16 truly at some point the sheriff will have to  
17 turn over these tapes, and so will the City of  
18 Gulfport. We would prefer, Your Honor, that  
19 that occur sooner rather than later. There's  
20 an old adage that says justice delayed is  
21 justice denied.

22 Your Honor, part of what's happening  
23 here, and part of what Mr. Crosby and I would  
24 like to control, is that there's a lot of  
25 speculation. The tape is going to show what

1           it's going to show. There may be audio.  
2           There may not be audio. The video may be  
3           grainy. We don't know. We haven't seen it,  
4           Your Honor. We would implore the Court to  
5           allow the subpoena to stand.

6                     The motions to quash, they may have some  
7           merit. And, actually when you think about it,  
8           Your Honor, I don't believe there's a great  
9           deal of disagreement as to the production of  
10          these tapes, other than the timing. If the  
11          Court or counsel opposite has concerns about  
12          the tape being released to the media -- I  
13          believe someone said that, but I don't recall  
14          exactly who. But if there is some concern  
15          about media access to the tapes before the  
16          grand jury returns, the Court can deal with  
17          that as it has in the past on other matters.

18                    The cases Mr. Faneca cites -- Strike  
19          that, Your Honor. There's one statute that he  
20          noted in his brief, and the statute basically  
21          says that in matters involving investigations,  
22          that they are not subject to be produced. But  
23          there's an exception to that, first and  
24          foremost, that fall under the Tort Claims Act,  
25          which we said doesn't even apply to this

1 proceeding. But assuming it does, there is  
2 always an exception when the best interests of  
3 the general public is at stake.

4 There are a lot of issues that must be  
5 ferreted out before there is even a serious  
6 consideration of filing under the Tort Claims  
7 Act or the 1983 Act. The federal courts  
8 require, as this Court is aware, something  
9 more than just notice pleadings on 1983  
10 actions. And as a consequence, it is  
11 incumbent upon Mr. Crosby, it is incumbent  
12 upon myself, it is incumbent upon Mr. Williams  
13 under the oath that he has signed that is in  
14 the pleadings in this court, that he will  
15 fully and fairly investigate any potential  
16 matters involving chattels, goods, credits  
17 and, most important, assets, Your Honor, of  
18 the estate of his deceased brother. We would  
19 assert that any potential evidence that is out  
20 there, Your Honor is indeed an asset of the  
21 estate; likewise, coming within the purview of  
22 this Court, for which this Court has  
23 jurisdiction, which the Court can direct the  
24 safekeeping, can direct the production, can  
25 direct the release, the method, the manner.



1                   And with that, we would ask the Court,  
2                   with all due respect to counsel opposite, with  
3                   respect to the District Attorney's office, to  
4                   allow Mr. Crosby and myself to have access to  
5                   this tape, Your Honor. And I'm saying tape.  
6                   It may be tapes, plural. We don't know. I  
7                   know, in conversations with Mr. Faneca and Mr.  
8                   Bruni, they have told me that they have  
9                   safeguarded the tapes; but, to that extent,  
10                  Your Honor, we believe we're entitled to it.  
11                  We believe that if there is some concerns that  
12                  the Court may have with counsel opposite, they  
13                  can be rectified. We believe there are other  
14                  mechanisms within the rules of civil procedure  
15                  that afford those protections.

16                 And as I go to my seat, talking about  
17                 those rules of civil procedure, which we  
18                 adopted, I believe, in 1980 or '82, Your  
19                 Honor, Rule 1 is a very important rule. And I  
20                 always -- when I have an opportunity to  
21                 address an issue concerning the rules, I  
22                 always just go back to that basic rule, what  
23                 is the scope of the rules? The rules of civil  
24                 procedure, which apply to this Court, are to  
25                 ensure the just, expeditious, and inexpensive

1 gathering of evidence and the resolution of  
2 cases. Is the sheriff and the City of  
3 Gulfport saying that on behalf of the estate  
4 Mr. Williams, we must now go out and begin to  
5 waste potential assets in order to have access  
6 to what the very basic premise of the rules  
7 was meant to achieve, that is, reducing costs,  
8 reducing time, reducing the burden upon  
9 parties who come before this Court? This  
10 Court has the authority. We do not envy the  
11 Court. It's a very difficult position, but we  
12 believe the decision is rather simplistic.  
13 Rule 45 is part and parcel of the rules of  
14 civil procedure. Mr. Williams, as  
15 administrator --

16 THE COURT: I have a difficult decision  
17 to make, but it's simplistic?

18 MR. WHITFIELD: It's a difficult decision  
19 to make, Your Honor, but it's very simple in  
20 its ultimate resolution.

21 The rules are what the rule are. The  
22 rules provide safeguards for every concern  
23 that has been raised. And if we are to  
24 further the tenets of the rules of civil  
25 procedure, Your Honor, that is, making

1 litigation, first and foremost, something  
2 that's inexpensive, something that's not  
3 burdensome, something that tries to reach an  
4 ultimate resolution and the truth, then we  
5 should go forward and allow the rules to speak  
6 for themselves.

7 If the Court has any questions, I would  
8 be glad to entertain them at this time, Your  
9 Honor.

10 THE COURT: I don't have any questions.

11 MR. WHITFIELD: Thank you, Your Honor.

12 THE COURT: Any rebuttal, Mr. Faneca?

13 MR. FANECA: Yes, sir.

14 May it please the Court, most of the  
15 argument raised by my esteemed colleague would  
16 be appropriate if this were a discovery issue  
17 being argued and the Court having subject  
18 matter jurisdiction were the case. It would  
19 be appropriate if we were in the Circuit Court  
20 in a wrongful death action. It would be  
21 appropriate if we were in the United States  
22 District Court in a 1983 action.

23 The jurisdiction to issue a subpoena  
24 duces tecum, which is tantamount to discovery  
25 -- stated differently, the jurisdiction to

1           conduct discovery in a matter cannot exceed  
2           the jurisdiction that the Court has over the  
3           matter. And that is the relatively simple  
4           issue before the Court. Here, we have a  
5           subpoena duces tecum that was issued seeking  
6           information that perhaps is relevant to a  
7           wrongful death action or a 1983 action,  
8           perhaps would even lead to the discovery of  
9           information that would be relevant to such  
10          actions, but it has nothing to do with the  
11          management of this estate.

12                 Now, the Court's jurisdiction with regard  
13          to the management of the estate, particularly  
14          when we get into the matter of a wrongful  
15          death action or a 1983 action, is to determine  
16          who is -- in order to protect the estate, in  
17          order to protect the wrongful death  
18          beneficiaries, determine who is the  
19          appropriate person to bring that. All of the  
20          parties who have an interest -- who may have  
21          an interest in such an action as plaintiffs  
22          may be entitled, may be heirs, wrongful death  
23          beneficiaries, are they in the action? Is the  
24          money, if there is a recovery, going to be  
25          distributed equitably and fairly within the

1 estate and to the wrongful death  
2 beneficiaries? It is not to determine who the  
3 wrongful death beneficiaries are to sue. It  
4 simply is not. That is not the function of  
5 the administration of the estate. This is not  
6 to investigate who the wrongful death  
7 beneficiaries may sue.

8 The Supreme Court has been clear on that  
9 issue because the underlying premise is that  
10 the subpoena has to be related to the  
11 jurisdiction of the court to the underlying  
12 controversy in the court. This subpoena is  
13 not related to the underlying controversy in  
14 the court.

15 Now, counsel would argue that, well,  
16 there are minors involved. And, of course, we  
17 all know in Chancery Court when we say minors,  
18 oh, we have to look after the interest of the  
19 minors, and the Court does. The Court does.  
20 But it is not to determine who should be sued,  
21 if anybody, and to conduct an investigation  
22 and to conduct discovery to determine not only  
23 who should be sued, but what the possible  
24 causes of action are, etc. That is not the  
25 function of this Court.

1                   Now, think about this. If it were, then  
2                   we would see this coming before the Court in  
3                   many, many tort actions. I mean, what would  
4                   be the difference, for example, if Mr.  
5                   Williams were unconscious in a coma, rather  
6                   than deceased? The same argument would apply.  
7                   To make the point, he could not identify who  
8                   he alleges caused him a wrong. He would like  
9                   for the Court to help him to make that  
10                  identification and to conduct that  
11                  investigation, and that is simply not within  
12                  the jurisdiction of the Chancery Court to  
13                  conduct such an investigation.

14                You know, it -- I could go on and on, but  
15                I think -- you know, I think I am articulating  
16                the point; that, if we follow the logic -- or  
17                the illogic, with all respect to my esteemed  
18                counsel, then we could be doing this in every  
19                tort case. And then they might say, well, no,  
20                because every tort case isn't going to include  
21                a minor. Well, a lot of them are. Well, what  
22                if it includes a guardian? You know, it's not  
23                necessarily a minor, but it's a guardian ad  
24                litem? Then we would be doing this same  
25                thing.

1           The courts are not set up that way. The  
2           courts are set up with jurisdictions to  
3           various courts, Chancery, Circuit, you know,  
4           and we go on and on. We know that. You can't  
5           issue a subpoena duces tecum to produce  
6           various records in a divorce case because one  
7           of the parties might have some kind of a  
8           lawsuit against somebody else. That's  
9           extraneous to the divorce case.

10           As much as anything, it is a common sense  
11           matter of understanding -- you know, analyzing  
12           and understanding the basis for the  
13           jurisdiction, and that the discovery, if you  
14           will, which is all a subpoena is, has to be  
15           relevant to the underlying controversy and has  
16           to be with regard to a matter that the Court  
17           has subject matter jurisdiction over.

18           Now, counsel has suggested that they have  
19           a duty under Rule 11 and litigation  
20           accountability to investigate. Well, no one  
21           argues with that. I would not dispute that.  
22           That's true in every lawsuit that is filed.  
23           But that duty, nowhere does it say -- nowhere  
24           is there a statute that says, and that duty  
25           may be pursued in the Chancery Court to file

1 an action perhaps against or to issue  
2 subpoenas to conduct an investigation, to go  
3 out and -- have the Chancery Court issue  
4 subpoenas to go out and determine whether or  
5 not there's a reasonable basis to name certain  
6 people as parties. The investigation is  
7 conducted before the suit is ever filed, and  
8 it's a reasonable investigation.

9 They have complied with the reasonable  
10 investigation. I mean, it's -- they have  
11 everything they need at this point to file a  
12 suit. I mean, there's no question about that.  
13 That's a slam dunk. They have satisfied the  
14 requirements of Rule 7, so that's not the  
15 purpose. But, I mean, you know, I didn't  
16 really want to get here -- I didn't want to  
17 get to this particular issue, but that is the  
18 red herring. It's not about any requirement  
19 that, as an officer of the court, this  
20 investigation hasn't been made. Let's face  
21 it. Everybody knows that Mr. Williams was in  
22 the custody of the Harrison County jail. Just  
23 the comments of counsel in the newspaper, on  
24 the radio, on his website, I mean, they have  
25 done a very good job, I would say, of



1 conducting an investigation.

2 Now, what normally happens is a suit is  
3 filed, and if one is searching for certain  
4 names to have the proper parties, discovery is  
5 conducted in the suit in which -- in the court  
6 in which the suit is filed. And those names  
7 are brought in -- you know, I mean, I see this  
8 day after -- you know, every day. I've been  
9 doing this, as the Court knows, for longer  
10 than I can remember, but it's -- that's the  
11 way it's done. So this has nothing to do with  
12 needing to conduct an investigation. But it  
13 does have to do with the jurisdiction of the  
14 Court. And I just -- it is so clear to me,  
15 Your Honor, and it is so clear in the Supreme  
16 Court cases that the subpoenas have to be  
17 relevant to the underlying action.

18 And, you know, minors, minors is a red  
19 herring in this issue.

20 Now, I don't know that I can elaborate  
21 much more on that, Your Honor; but, as I said,  
22 if the Court -- It's not about bringing up  
23 sooner rather than later. It's not the  
24 efficient administration of justice. Sure,  
25 that's the purpose of all the rules, but we

1 have to look at the specific rules to  
2 determine what is proper within each rule,  
3 what is proper within Rule 26, what is proper  
4 within Rule 45. There is the overall purpose.  
5 This is what these rules are all about.

6 And contrary to what counsel opposite is  
7 asserting, I would suggest that the effort to  
8 do this subpoena duces tecum is contrary,  
9 totally contrary, to the purpose of the rules,  
10 which is to provide for an orderly  
11 administration of justice, to provide rules,  
12 to provide procedures, to provide a remedy for  
13 every wrong, but in the appropriate court; not  
14 to go running around nilly-willy saying --  
15 willy-nilly saying, oh, if you give me this,  
16 and if you give me that, I'm going to be able  
17 to get through this thing faster.

18 We have a time-tested procedure in  
19 Anglo-Saxon law and common law. We have a  
20 time-tested procedure with rules, with various  
21 courts of jurisdiction, various jurisdictions,  
22 and it has worked. It has worked for hundreds  
23 of years. And I would suggest this is an  
24 effort -- I'm not saying so much that it's  
25 intentional, but I am saying that the result

1 of this is contrary to the procedures that we  
2 have followed in our society for many, many  
3 years.

4 And I'm also suggesting that for every  
5 wrong, there is a remedy under our law. And  
6 it is up to the attorneys, and it is up to the  
7 attorneys whether they be advocates and  
8 whether they be judges to preserve the  
9 integrity of our jurisdictional system, and  
10 not to deviate from the procedure, not to  
11 deviate from the rules, in order to maintain  
12 the confidence in our system and in order to  
13 prevent our system from simply being an ad  
14 hoc, make it up as we go, whatever appears to  
15 be expedient, wherever there appears to be  
16 some justice. If we follow the law, if we  
17 follow the procedure, the likely result at the  
18 end of the day is going to be justice. And I  
19 would implore the Court not to deviate from  
20 that course of action. Thank you, Your Honor.

21 THE COURT: Mr. Bruni, do you have  
22 anything, sir?

23 MR. BRUNI: Just briefly, Your Honor.

24 As Mr. Faneca has borne out, again,  
25 there's to be a reasonable relationship

1           between what the -- the items the subpoena  
2           seeks and the issues before the Court. Along  
3           these lines, Your Honor, to what -- the case  
4           that I spoke to earlier -- And for the record,  
5           the case that sets that out, we set out on  
6           page 3 of our motion, the Mississippi Ethics  
7           Commission case. So counsel for the estate  
8           has said that the items that they're seeking  
9           by subpoena are necessary to investigate the  
10          viability or the legitimacy of a claim for  
11          damages. Well, if that's true, again, they  
12          have to go back to that recent case of Long  
13          versus McKinney, where the Supreme Court  
14          emphatically said they were addressing all of  
15          the misconceptions and misperceptions and  
16          understandings dealing with wrongful death  
17          claims and how they bleed into and affect  
18          estate proceedings.

19                 And as the Supreme Court pointed out,  
20                 there is absolutely no law or court authority  
21                 or permission needed for pursuing a wrongful-  
22                 death claim, and that this is not the function  
23                 for the administration of an estate. I mean,  
24                 Your Honor, that's succinct. You can't change  
25                 that. That's the law. And if that's the law,

1 I'm having a hard time in my mind wondering  
2 why we're arguing all of this so long because  
3 --

4 THE COURT: Well, they also say in that  
5 case that while Chancery Court approval is not  
6 required, that it's probably advisable to go  
7 through Chancery Court for the purposes that  
8 they very explicitly state in the Long  
9 opinion. And I've cut you off. I'm sorry.

10 MR. BRUNI: No, that's okay. Well, Your  
11 Honor, I'm glad you brought that up. In the  
12 decision, Your Honor, the Court states that  
13 the reason why we do that is for appointment  
14 of a representative of the estate if the  
15 estate wishes to join in a wrongful death  
16 claim. The second would be approval of the  
17 contract for the attorney representing the  
18 estate, and then it discusses the potential  
19 conflicts of interest with regard therein.  
20 And the third thing is to make sure that the  
21 recoupment of any monies is properly dealt  
22 with in the administration of the estate.  
23 It's not that the estate needs permission or  
24 authority from the Chancery Court to pursue an  
25 action for damages on behalf of the estate.

1           You don't need the authority, but you do need  
2           the representative.

3           Now, if there was -- for instance, the  
4           wrongful death statute still states there's  
5           only one action, and in that one action,  
6           there's a person or -- representing the other  
7           wrongful death beneficiaries, as well the  
8           estate. There's no requirement, as the  
9           Supreme Court says in that Long case, that the  
10          estate has to get permission before it goes  
11          and joins in that wrongful death action.

12          So -- But, again, we're missing the issue  
13          here. The issue is the subpoena. Is there a  
14          reasonable, rational relationship between the  
15          items sought and the issues before the Court?  
16          Well, again, the Supreme Court says the issue  
17          before this Court is not whether the estate  
18          has the authority to file a wrongful death  
19          action; and so, therefore, the argument of  
20          counsel opposite is flawed in that there is no  
21          issue before the Court in any way having any  
22          relationship with the items sought by the  
23          estate.

24          Substantively, counsel -- Mr. Whitfield  
25          has brought up before the Court an AG's

1 opinion that talks about disclosure of the  
2 items. Now, I know Mr. Faneca had not delved  
3 into the substantive argument, if you will,  
4 about disclosure. And just briefly to touch  
5 on that, Your Honor, the Court is aware by the  
6 motions before the Court on the various  
7 statutes that explicitly hold on nondisclosure  
8 of documents and records and specifically the  
9 items requested.

10 Now, the only argument made by counsel is  
11 that there's an AG's opinion that says that if  
12 it's in the public benefit, even though the  
13 statute holds that items should not disclosed,  
14 they can be disclosed. Well, that's not what  
15 the AG's opinion says, with all due respect.  
16 The AG's opinion merely goes off in -- of  
17 course, an AG's opinion -- an Attorney  
18 General's opinion, for the record, Your Honor,  
19 is merely advisory anyway. And it states that  
20 the statutes hold that these items should not  
21 be disclosed, and so it reiterates what's held  
22 in the statute.

23 But we have to remember, the statutes are  
24 a legislative pronouncement of the balancing  
25 of interests here. And I'm hearing argument

1 on both sides about the interests involved and  
2 whether there should be disclosure or not.  
3 These balancing -- this balancing, if you  
4 will, has already been held by the legislature  
5 in the statute. It's not for the Court to  
6 make here. It's not for argument by the  
7 counsel, either. And so the statutes are  
8 explicit in the fact that these items are  
9 nondisclosable.

10 It's also borne out in the  
11 representation, or the argument, if you will,  
12 from the representative of the District  
13 Attorney's office here this morning, as well,  
14 about the grand jury proceeding.

15 Without belaboring the Court any more,  
16 and I know the Court has other docket matters  
17 to attend to, the bottom line is there's no  
18 jurisdiction, not for the wrongful death  
19 proceeding, Your Honor, but for the issuance  
20 of the subpoena as a tool or an instrument of  
21 discovery. That's the jurisdictional issue  
22 before the Court. And the second thing is  
23 that state law precludes, as well as common  
24 law, the disclosure of the items sought.

25 THE COURT: All right. The Court agrees



1 with Mr. Whitfield to a point, that it's faced  
2 with a difficult decision. Much has been  
3 argued here today about subject matter  
4 jurisdiction. And clearly, the Court does not  
5 have subject matter jurisdiction over wrongful  
6 death claims, and it does not have subject  
7 matter jurisdiction over 1983 claims.

8 The issue before the Court is the  
9 subpoena duces tecum -- the two subpoenas  
10 duces tecum, one served on the sheriff and one  
11 on the City of Gulfport for videos and other  
12 items which the plaintiff here, Mr. Williams  
13 -- Mr. Terry Williams, wishes to use as  
14 evidence in a potential wrongful death claim  
15 or a 1983 action. I think that's a given.

16 While the Court does not have subject  
17 matter jurisdiction of the wrongful death and  
18 a 1983 action, the Court would have  
19 jurisdiction on a complaint -- a separate  
20 complaint for discovery, which is an ancient  
21 remedy in equity. But the filing of the  
22 subpoena duces tecum itself does not invoke  
23 that jurisdiction. There are certain elements  
24 that must be alleged and proven to succeed on  
25 a separate complaint for discovery.

1           The fact that the Court would entertain a  
2           complaint for discovery and may or may not  
3           grant the relief does not mean that it would  
4           ultimately hear the wrongful death action or  
5           the 1983 action. It would not.

6           The Court will grant the motions to quash  
7           the subpoenas because of that reason. That  
8           does not preclude the subsequent filing of a  
9           separate complaint for discovery by any means.  
10          But, at least on the procedural track that  
11          this matter is presented to the Court, I  
12          cannot grant the relief in the fashion in  
13          which it's brought to me. Now, that's not to  
14          say that I would ultimately give relief on a  
15          complaint for discovery, because there's  
16          separate elements that I'm charged with  
17          finding in that -- in the event a complaint  
18          for discovery was filed.

19          I also must say that as a Chancery  
20          Court, a court of the State of Mississippi,  
21          a constitutionally-created court, I must  
22          also, under these particular facts, give a  
23          significant amount of weight to the interest  
24          of the State of Mississippi, not the sheriff  
25          of Harrison County or the City of Gulfport,

1 but the State of Mississippi in its capacity  
2 to present cases to the grand jury and to  
3 prosecute indictments if true bills are  
4 returned. I must also give that same  
5 consideration to the United States of America,  
6 in the event the U.S. Attorney presents a  
7 matter to a federal grand jury and indictments  
8 are returned.

9 I will do nothing that would even come  
10 remotely close to prejudicing the rights of  
11 the State of Mississippi or the United States  
12 America to pursue a criminal action in any  
13 case. That's their bailiwick to make that  
14 decision.

15 The other part of -- or basis of my  
16 decision is that these events occurred in  
17 early February, and we're now in early March.  
18 I believe, and, Mr. Crosby, you correct me  
19 and, Mr. Whitfield, if I'm wrong, that we're  
20 dealing with essentially a one-year statute of  
21 limitations on certain elements that you would  
22 bring.

23 MR. CROSBY: Yes, sir.

24 THE COURT: I find that the overriding  
25 interest of the State of Mississippi and the

1 United States of America, should they wish to  
2 bring an indictment, at least at the moment,  
3 overrides the private interest of the heirs of  
4 Mr. Williams, insofar as the information they  
5 request.

6 Having said all of that, and the fact  
7 that I -- it's not been argued to me or shown  
8 to me that there would be great prejudice in  
9 delaying this matter until -- for a reasonable  
10 period of time, so that matters could be  
11 presented to the grand jury; but, at least in  
12 the context in which this matter is presented  
13 to the Court, that is, subpoena duces tecum in  
14 a wrongful death action, which is a separate  
15 statutory creature -- It's not -- a wrongful  
16 death claim is not an asset in a decedent's  
17 estate like his home or his property or a bank  
18 account might be. That claim is not subject  
19 to the claim of creditors, except for funeral  
20 expenses and attorney's fees.

21 But the Court would, if properly  
22 presented -- if it were properly presented to  
23 the Court, have the authority to consider a  
24 separate complaint for discovery brought by  
25 one of the wrongful death beneficiaries.

1                   So, for that -- those reasons, I'll ask  
2                   Mr. Faneca and Mr. Bruni if you will prepare  
3                   an order consistent with my bench opinion. I  
4                   make it clear, this is without prejudice to  
5                   the rights of Mr. Williams to initiate any  
6                   other action in this Court which would be  
7                   proper in a chancery proceeding.

8                   I will also say that the matters  
9                   regarding the evidence sought, their  
10                  safekeeping and spoliation, if that should  
11                  occur, are best considered by the trial court  
12                  judge in Circuit Court or the United States  
13                  District Court.

14                  But the Court will not impose sanctions  
15                  as requested by the sheriff's office. If the  
16                  request had been made through a complaint of  
17                  discovery, clearly, it would have been a  
18                  proper pleading in this Court. That doesn't  
19                  mean the Court would have granted it or will  
20                  grant it if one is filed. But the Court does  
21                  not view the request as a sanctionable event.

22                  There being nothing further, the Court  
23                  will be in recess for a few minutes.

24                  (OFF THE RECORD.)

25                  THE COURT: I would ask -- it was stated

1 by Mr. Whitfield that the wrongful death  
2 beneficiaries are seven minor children. I  
3 would ask that you read carefully the Long  
4 versus McKinney case, in which it says that  
5 any agreement for the payment of attorney's  
6 fees from a minor's share of proceeds must be  
7 approved by a chancellor. What's been  
8 approved so far does not encompass the minors'  
9 interests. So if there were a recovery, your  
10 contract would only recover -- cover the  
11 funeral expenses. I'm sure you don't want  
12 that.

13 MR. WHITFIELD: Your Honor, we've  
14 actually made that request.

15 THE COURT: All right. Thank you.

16 And, also, Mr. Whitfield, there's not a  
17 copy of your contract attached to your  
18 petition as stated. I would like for you to  
19 furnish one to the clerk's office, with your  
20 certificate that that's the contract you  
21 provided to Judge Bise when he opened the  
22 estate for you.

23 MR. WHITFIELD: Very well, Your Honor.

24 THE COURT: Thank you.

25 (THE HEARING WAS CONCLUDED.)

**CERTIFICATE OF COURT REPORTER**

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

I, Judi Morrow Schultz, CSR No. 1254, Official Court Reporter of the Eighth Chancery Court District of the State of Mississippi, certify that the above and foregoing fifty-four (54) pages contain a true and correct transcript of the matter taken by me in the hearing before HONORABLE JIM PERSONS, Chancellor of the Eighth Chancery Court District of Mississippi, on March 2, 2006.

WITNESS MY SIGNATURE, this the 15th day of March, 2006.

*Judi Morrow Schultz*  
Judi Morrow Schultz, CSR, 1254  
504 Fairway Drive  
Pass Christian, Mississippi 39571  
228-865-4011 228-452-2384

JUDI MORROW SCHULTZ, CSR, OFFICIAL COURT REPORTER  
504 FAIRWAY DRIVE, PASS CHRISTIAN, MS. (228)865-4011

